IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : DDA MATTER

Writ Petition (C) No. 4886 of 2006 and CM 4054/2006

Reserved on: August 3, 2007

Date of decision: September 7, 2007

MAHARAJ KRISHAN KAPOOR ..... Petitioner
Through Mr. Aly Mirza, Advocate.

versus

DELHI DEVELOPMENT AUTHORITY and ANR. ..... Respondents
Through Mr. M.P.Singh, Advocate for DDA.
Mr. Anurag Mathur, Advocate for R-2.

CORAM:
HON'BLE DR. JUSTICE S.MURALIDHAR

Dr. S. Muralidhar, J

1. The Petitioner seeks a writ of certiorari to quash a communication dated 3.3.2006 sent to him by the Delhi Development Authority (DDA) calling upon him to make a payment of Rs. 36,23,538 constituting the permission fee for the running of a branch of the State Bank of India (SBI), Respondent No.2 herein (SBI) in the premises at E-27, Saket, New Delhi ("the premises in question") during the period 1.4.1990 to 6.5.1999. The payment of the permission fee was demanded pursuant to an application made by the Petitioner to the DDA on 23.12.1999 for conversion of the premises in question from leasehold to freehold. The alternative prayer in the writ petition is for a direction to the Respondent No.2 SBI to deposit the said amount with the DDA, for a mandamus to the DDA to allow the Petitioner's application dated 23.12.1999 seeking conversion of the premises in question from leasehold to freehold and execute the necessary conveyance deed in favour of the Petitioner. Background facts:

2. The Petitioner is the holder of a perpetual lease in respect of the premises in question under a lease deed dated 21.4.1977 executed by the DDA acting on behalf of the President of India. Although the permissible user of a premises under the said perpetual lease deed was residential, an exception was envisaged under the proviso to Clause 13 whereby the petitioner could apply to the DDA for use of the premises for a purpose other than a private dwelling subject to the payment of additional premium and additional rent as the DDA in its discretion would determine.

3. After obtaining licence from the Reserve Bank of India, the SBI opened several of its branches in Delhi. It approached the Petitioner for opening its branch in the premises in question. The SBI, in terms of the proviso to Clause 13 of the perpetual lease deed, applied to the DDA on 5.6.1985 for permission to run its branch in the premises in question. A lease deed was entered into on 13.6.1985 by the Petitioner (described in the lease deed as lessor) and the SBI (described in the lease deed as lessee). Clause II (c) required the Petitioner to pay the composition fee (otherwise called permission fee) to the DDA for the non-conforming use of the premises in question by the SBI. The lease was for a period of 5 years beginning 23.3.1985. The monthly rent was Rs. 13,580 which included "DDA composition fee of Rs. 3880/- per month."

4. On 11.9.1985 the DDA wrote to the SBI stating that its request for permission would be considered upon the SBI paying the DDA "composition fee at 40 per cent of the total rent with effect from the date of the commencement of the misuse up to 30.6.1986 by means of the demand draft in favour of the DDA." The SBI was also directed to furnish the unconditional written consent from the landlord of the premises, i.e., the Petitioner here, and an undertaking that the non-conforming use would be terminated by the expiry period, i.e., 30.6.1986. A copy of the lease deed executed between the Petitioner and the SBI was also asked to be furnished. Thereafter, by its letter dated 22.11.1985, the DDA granted permission to the SBI to run its branch in the premises in question for the period 23.3.1985 to 13.6.1986.

5. In terms of the lease deed, the SBI paid the composition fee to the DDA for running the bank branch in the premises in question. The Petitioner has placed on record a photocopy of a challan dated 29.6.1990 whereby the SBI deposited with the DDA composition (permission) fee in the sum of Rs. 57,074 which was payable for the period up to 31.3.1990.

6. It appears that several of the banks including the SBI filed petitions questioning the levy of the permission fee by the DDA at the rate of 40 per cent of the rent under the respective lease deeds. The banks contended that the said permission fee should be only ten per cent of the difference between the current commercial rate

and the current residential rate approved by the Ministry of Urban Development. Meanwhile since the banks, including the SBI continued operating their branches in residential areas without paying the composition fee to the DDA, the latter launched prosecutions against the banks for misuse in terms of the Delhi Development Act 1957. Consequent upon the grant of stay of prosecutions in the petitions of the banks in the High Court, the DDA approached the Hon'ble Supreme Court. It is not in dispute that the Hon”ble Supreme Court stayed the prosecutions including Complaint No. 45 of 1994 filed by the DDA against SBI.

7. According to the Petitioner, in the view of the above developments, the SBI informed the Petitioner that there was no longer any requirement for the SBI to pay composition fee in respect of the premises in question to the DDA. Accordingly at the end of the first lease period of five years, the SBI claimed the renewal of the lease deed in terms of Clause II (j) of the lease deed dated 13.6.1985 without the requirement of the SBI having to pay composition fee. After negotiations a fresh lease deed was executed by the petitioner and the SBI on 16.1.1992. In terms of the second lease deed, which was for a further period of 5 years from 16.1.1992, the monthly rent was fixed at Rs. 16,296. It was expressly stated in Clause 2 (e) that “the bank will pay composition fee as determined by DDA as hitherto”.

8. A third lease deed was executed on 8.2.2001 by the Petitioner and the SBI renewing the lease for a term of five years from 1.10.2000 at a monthly rent of Rs. 76,265. As regards the payment of the composition fee, it was stated in Clause 2 (c) that “previous terms and conditions which were applicable up to December 1996 will remain in force up to 30.9.2000”. In other words, the liability to pay the composition fee (permission fee) continued to be that of the SBI.

9. In the meanwhile, a Notification was issued on 7.5.1999 by the Government of India, Ministry of Urban Development whereunder the regularisation of the use of residential premises for non-residential purposes would be granted upon the payment of permission fee to the Municipal Corporation of Delhi (MCD). On 10.6.1999, the MCD brought out guidelines for allowing mixed land use. It set out the conditions under which nursing homes, guest houses and banks would be permitted to operate in residential areas. Therefore, with effect from 7.5.1999, the composition fee at the enhanced rate of Rs. 1,53,839 was payable to the MCD.

10. By its letter dated 6.12.2001, the MCD raised a total demand of Rs. 4,46,344 towards the composition fee payable in respect of the premises in question for the period from 7.5.1999 to 31.3.2002. According to the Petitioner, a part of the said composition fee i.e. Rs. 2,30,758 was paid by the Petitioner (for the period from 1.10.2000 to 31.3.2002) and the other part, in the sum of Rs.2,15,586, was paid by the SBI for the period from 7.5.1999 to 30.9.2000.

11. Pursuant to a policy framed by the DDA in 1992, the Petitioner applied to the DDA on 23.12.1999 for conversion of the premises in question from leasehold to freehold. The Petitioner deposited the first instalment of Rs. 46,452 towards the conversion charges. The second instalment together with interest in the sum of Rs. 12,872 was paid on 22.7.2003. The admitted position is that the entire conversion charges stand paid.

12. The third lease deed came to an end on 13.9.2005 and the SBI did not exercise the option of renewal. Consequently, the Petitioner asked the SBI to hand over vacant possession of the premises in question. The SBI sought time but did not vacate the premises. Consequently, the Petitioner filed a suit for eviction of the SBI from the premises in question, in the Court of the District Judge, Delhi. A decree for ejectment was passed by the District Judge in favour of the Petitioner granting SBI time to vacate the premises up to 31.12.2006. The SBI then approached this Court by filing Civil Revision Petition No. 363 of 2006. In the said petition, an order dated 20.12.2006 was passed granting the SBI time till 31.5.2007 to vacate the premises subject to the payment of Rs. 1 lakh per month towards use and occupation charges to the Petitioner. It was made clear by this Court that the said order would be without prejudice to the rights of the Petitioner in the present writ petition. It is stated that pursuant to the aforementioned order, the SBI has vacated the premises in question. Therefore the misuse has not continued in the premises in question after 31.5.2007. The present petition

13. On 3.3.2006 the DDA wrote to the Petitioner in respect of his application for conversion from leasehold to freehold stating that the amount of permission fee for running the SBI branch in the premises in question for the period 1.4.1990 to 6.5.1999 had been calculated at Rs. 36,23,538. The Petitioner was asked to pay the said permission fee within thirty days. The Petitioner then filed this writ petition on 29.3.2006 seeking the reliefs as mentioned in the first paragraph.

14. According to the Petitioner the demand for permission fee/ composition fee had no legal basis. There was no clause in the perpetual lease deed which empowered the DDA to levy and collect such permission fee. Secondly, the permission granted for use of the premises for running the branch of the SBI was granted by the DDA to the SBI on certain terms and conditions and the Petitioner was not privy to such grant of permission. The obligation to pay permission fee under the terms and conditions of such permission, read with the clauses of the lease deeds executed between the Petitioner and the SBI, indicate that the liability to pay composition fee was that of the SBI. According to the Petitioner, the grant of the conversion from leasehold to freehold could not be linked up with the payment of composition fee. Further in the scheme announced by the DDA for conversion, no such condition has been indicated. The Petitioner having deposited the entire conversion charges and having made an application on 23.12.1999, it

was unfair on the part of the DDA to wait for over six years and raise a demand for payment of permission fee of such a huge sum. Moreover, at no point of time, was any show cause notice was issued by the DDA, calling upon the Petitioner to make such payment. The demand was also assailed as being barred by limitation.

15. Pursuant to the notice issued by this Court, a counter affidavit has been filed by the DDA on 31.7.2006 stating that the Delhi Development Authority (Permission of Residential Land and Building for use as Banks) Regulations, 2003 (`The 2003 Regulations") were made effective only on 11.3.2003. At the time the premises in question were let out by the Petitioner to the SBI, the said Regulations were not in force, and therefore could not be taken advantage of by the Petitioner. It is claimed that the permission granted by the DDA to the SBI was for a specific period. By the letters dated 26.7.1990 and 27.4.1992, the DDA had written to the SBI, declining permission to run the bank in the premises in question. It is stated that as per the perpetual lease deed, the DDA was entitled to recover the misuser charges from the Petitioner here, and any agreement that may have been entered into between the Petitioner and the Respondent No.2 Bank could not bind the DDA. It is claimed that conversion scheme provides that before any conversion can be allowed, the lessee is liable to pay all the dues existing on the date of the conversion, and that the inter se disputes between the Petitioner and the Respondent No.2 had to be sorted out between them.

16. The SBI filed a counter affidavit on 12.12.2006 referring to proceedings pending in the Hon'ble Supreme Court whereby a stay of the prosecution of the SBI, at the instance of the DDA, had been ordered. It was therefore submitted that the demand raised by the DDA was illegal and in violation of the stay order passed by the Hon'ble Supreme Court. It was stated that the guidelines issued on 7.5.1999 and 11.3.2003 by the Ministry of Urban Development permitted the user of the residential premises for running banks and, therefore, no application was required to be made by the SBI to the DDA for grant of permission. It is further claimed that since composition fee has been paid to the MCD for the period 6.5.1999 onwards, no composition fee is further payable to the DDA for the same period. According to the SBI there is no question, therefore of any misuse charges or composition fee for the period subsequent thereto.

17. There were certain other developments that need to be taken note of at this stage. On 29.11.2006 in Criminal Appeal No. 633 of 1996, filed by the DDA against the SBI, the Hon"ble Supreme Court passed the following order: "Criminal Appeal No. 633/1996 : We are told that in this appeal, 19 premises are involved where the State Bank of India was operating its branches. Some of the branches have ceased to operate and some have been regularised. Learned counsel for the State Bank of India states that only three branches which do not conform are operating and six months' time may be granted so that, in the meantime, the said

branches may either cease the operation and/or ensure that the user conforms to the norms of the DDA. The time, as prayed for, is granted. The appeal is disposed of in terms of the statement made by learned counsel for the appellant and, in this view, the complaints filed against the bank are quashed."

18. It is an admitted position that the reference to the nineteen branches of the SBI in the aforementioned order included the branch at E-27, Saket, i.e., the premises in question. This is also clear from the report of the Committee which was constituted pursuant to certain orders passed by the Hon'ble Supreme Court on 4.1.2006 in the above matters. A copy of the proceedings of the said Committee has been handed over to this Court. Among the branches of the SBI that were found by the Committee to be qualified for permission, the premises in question was included. It was stipulated that the permission would be granted upon the payment of the permission fee, as determined in terms of the 2003 Regulations.

19. The Order dated 29.11.2006 indicates that the criminal complaints against the SBI were quashed by the Hon'ble Supreme Court in terms of the Report of the Committee under which branches of the banks that were operating as on that date were to be regularised as per the norms of the DDA as emphasised in the statement made by the counsel for the SBI before the Hon'ble Supreme Court. Since the DDA was a party to the aforementioned order before the Hon'ble Supreme Court, it was required to follow up with the SBI if according to it misuser charges or permission fee was payable by the SBI in terms of the aforementioned order. Who is liable to pay the composition fee

20. The short question is whether the DDA can insist that the petitioner should pay the entire composition/permission fee for the period from 1.4.1990 to 6.5.1999 and make this a pre-condition to the grant of conversion. The fact that there was misuse of the premises in question for the said period is not in dispute. The power of the DDA to collect composition or permission fee has not been questioned by the petitioner. As far as the SBI"s challenge to the power is concerned, it ended with the order dated 29.11.2006 passed by the Hon"ble Supreme Court. The only question therefore is who is liable to pay the composition/permission fee and for which period"

21. Under the terms of the three lease deeds, the liability to pay composition fee from 16.1.1992 to 30.9.2000 was that of the SBI. The order dated 29.11.2006 in the Hon'ble Supreme Court also indicates that SBI had agreed that its continuing to operate its branch in the premises in question for a period beyond six months from that date would be subject to SBI complying with the norms of the DDA. Pursuant to the orders of this Court dated 20.12.2006, the SBI continued in the premises in question till 31.5.2007. It therefore vacated before the expiry of six months from 29.11.2006. What is clear from this order is that throughout the DDA was

proceeding only against the SBI for recovery of the composition/permission fee in respect of the premises in question. The DDA and the SBI are equally bound by the order dated 29.11.2006 and if the DDA believes that any composition fee is still due to it in terms of that order, then it should proceed against the SBI. Clearly the petitioner was not a party to these proceedings and no liability on this score can attach to the petitioner.

22. Factually too, the SBI has already deposited the composition fee with the DDA for the period till 31.3.1990. It is also not in dispute that from 16.1.1992 onwards the SBI was liable to pay the composition fee which in fact it has already deducted from the monthly rent paid to the petitioner. After 6.5.1999 the composition fee stands paid to the MCD. Therefore, in terms of the impugned demand dated 3.3.2006, the period from 1.4.1990 till 16.1.1992 requires to be accounted for.

23. The second lease deed is not very clear whether the liability to pay the composition fee for the period from 1.4.1990 till 16.1.1992 rests with the SBI. Still, Clause 2 (e) states that the "Bank will pay composition fee as determined by the DDA hitherto." It is not in dispute that the SBI continued in the premises in question during this period. The permission for using the premises for running a branch of the SBI was revoked by the DDA by its letters dated 26.7.1990 and 27.4.1992. It appears, therefore that the DDA allowed the SBI to continue in the premises at least till 27.4.1992. This is clear from the letter dated 27.4.1992 written by it to the SBI which reads as under: "Your kind attention is invited to this office letter of even No. dated 26.9.91 and its subsequent reminders dated 30.12.91 and 29.1.92 vide which you were requested to furnish a fresh request for grant of temporary permission to use the premises in question as non-conforming use for running a Bank Branch for the period up to 31.12.92, but you have not submitted the request along with no- objection from the owner of the premises so far. It is further pointed out that the extended period has already been expired and misuse is going on till date without any prior permission. You are, therefore, again requested to furnish the required documents/application within ten days from the date of issue of this letter, failing which an action under D.D.A Act, 1957 shall be initiated. An officer of lease Admn. Cell will also be approached to cancel the lease deed."

24. This correspondence shows that either the DDA acquiesced in the SBI continuing to use the premises in question for running a branch without permission and without paying the necessary charges or if did not, then the prosecution it sought to launch against the SBI was for the misuse for this period as well. In any event by this time, the SBI had already decided to challenge the power of the DDA to demand composition fee at 40% of the rent. By its conduct the DDA has acknowledged that its position has been that the composition fee even for this period, i.e. from 1.4.1990 to 16.1.1992 was recoverable if at all only from the SBI.

For the period from 16.1.1992 to 6.5.1999 the SBI is bound by the lease deed clauses which have already been referred to.

25. In the view of this Court, the liability of the SBI to pay composition/permission fee for the period 1.4.1990 to 16.1.1992 has to be understood in terms of the Order dated 29.11.2006 of the Hon"ble Supreme Court of India. To recapitulate the relevant portion of that order: "Learned counsel for the State Bank of India states that only three branches which do not conform are operating and six months' time may be granted so that, in the meantime, the said branches may either cease the operation and/or ensure that the user conforms to the norms of the DDA. The time, as prayed for, is granted. The appeal is disposed of in terms of the statement made by learned counsel for the appellant and, in this view, the complaints filed against the bank are quashed. One possible interpretation is that since the avoidance of prosecution by the SBI for the misuse of the premises for the period in question was conditional upon it conforming to the norms of the DDA, for the period of the misuse from 1.4.1990 till 16.1.1992, the liability to pay composition fee if any falls on the SBI itself. The other is that the SBI having vacated the premises within six months from the date of the order dated 29.11.2006, which time was granted by the Hon"ble Supreme Court, the SBI is not liable to pay any permission fee as long as it vacated the premises in question within six months from that date. In either event, the liability for the payment of composition/permission fee cannot be fastened on to the petitioner.

26. The Petitioner is right in his contention that having been a party to the above order dated 29.11.2006 of the Hon"ble Supreme Court, the DDA cannot seek to recover composition fee both from the Petitioner as well as the SBI. The DDA having decided to prosecute the SBI for the misuser of the premises and having been a party to the order of the Hon"ble Supreme Court quashing the prosecution, it cannot insist that the petitioner should first make the payment of composition fee before the DDA can grant conversion of the premises in question from leasehold to freehold.

27. The reliance by the Petitioner on the judgments of this Court in Sant Ram Sondhi v. Lt. Governor 2005 V AD(Delhi) 135 and Sagar Enterprises v. Union of India 2007 (93) DRJ 470 is also well founded. In both those cases, this Court has held that for the default committed by the tenant in misusing the premises without due permission of the DDA, the liability to pay misuser charges cannot be fastened on the landlord and that the payment of such misuser charges by the landlord in those circumstances cannot be made a pre-condition for the grant of conversion. As has been held in those cases, the demand for the payment of the permission fee was never ever made from the landlord till the application for conversion was made and it was held to be arbitrary that "no explanation is forthcoming as to how

such large sums of money are sought to be recovered, without the Respondents having taken any action to enforce their rights under the lease deeds".

28. Turning to the facts of the present case even though the Petitioner had applied on 23.12.1999 for grant of conversion, it was not till 3.3.2006 that he was informed of his having to pay permission fee for the period from 1.4.1990 till 6.5.1999. As already held, the liability for payment of permission fee for the period in question is, in the present case, not that of the Petitioner. If indeed the misuser continued from 1.4.1990 onwards, there is no explanation why it took the DDA six years after the petitioner"s application for conversion dated 23.12.1999, to raise a demand for composition/permission fee on the Petitioner. No prior show cause notice has been issued to the Petitioner calling upon him to pay this sum. The Petitioner is therefore also justified in the plea that the impugned demand is barred by limitation.

29. Accordingly, the impugned demand for permission fee raised by the DDA against the Petitioner by its letter dated 3.3.2006 in respect of the premises in question is held to be bad in law and is hereby quashed. As regards the liability the SBI, the facts of the present case show that the SBI had already been deducting the composition fee component from the monthly rent payable to the petitioner for the premises in question during the period from 16.1.1992 onwards till it vacated the premises. It remains to be seen whether this amount was remitted by the SBI to the DDA. The question of the liability of the SBI for the period prior thereto will also have to be determined in light of the order dated 29.11.2006 of the Hon"ble Supreme Court. If in light of these facts and circumstances, the DDA seeks to contend that the permission fee is still owing to it for the premises in question it will open to the DDA proceed against the SBI in accordance with law.

30. The Petitioner has admittedly paid the entire conversion charges together with interest. Therefore, within a period of four weeks from today, and in any event not later than 8.10.2007, the DDA will pass the necessary orders granting conversion of the premises in question from leasehold to freehold and also execute the necessary conveyance deed in favour of the petitioner within the same period.

31. With the above directions, the writ petition is allowed with costs of Rs. 5,000 which will be paid by the DDA to the Petitioner also within a period of four weeks from today, and in any event not later than 8.10.2007.

(S. Muralidhar)
Judge